DRAFT
BOARD OF OPTOMETRY
BOARD MEETING
MARCH 15, 2007

TIME AND PLACE:	The meeting was called to order at 10:04 a.m. on Thursday, March 15, 2007 at the Department of Health Professions, Conference Room 4, 6603 W. Broad St., Richmond, VA.
PRESIDING OFFICER:	David H. Hettler, O.D, President
MEMBERS PRESENT:	Paula H. Boone, O.D. Gregory P. Jellenek, O.D. W. Ernest Schlabach, Jr., O.D. Jacquelyn S. Thomas, Citizen Member William T. Tillar, O.D.
STAFF PRESENT:	Emily Wingfield, Chief Deputy Director Sandra Ryals, Director Elizabeth A. Carter, Ph.D., Executive Director for the Board Elaine Yeatts, Senior Regulatory Analyst Carol Stamey, Administrative Assistant
MEMBERS ABSENT:	All Board members were present.
OTHERS PRESENT:	Betty Graumlich, NAOO Bruce Keeney, VOA
QUORUM:	With six members of the Board present, a quorum was established.
REVIEW AND APPROVAL OF AGENDA:	The order of the agenda was revised as well as the addition of comments of the Agency Director, Ms. Ryals.
PUBLIC COMMENT:	Bruce Keeney, Executive Director, Virginia Optometric Association, presented public comment in regards to COPE and AMA accrediting CE organizations. Specifically, he stated that COPE courses are usually national courses only and AMA sponsorship could include courses put on by pharmaceutical products/vendors which may focus on non-optometric issues. Mr. Keeney also presented brief comment on the American Optometric Association's latest update on New Level II CPT Codes. He stated that the codes had been mandated by the federal government, specifically, for use with Medicare and Medicaid. Mr. Keeney requested that the Board consider

adding the new CPT codes to its existing list of approved CPT codes.

COMMENTS OF THE AGENCY DIRECTOR:

Ms. Ryals presented an update on the Governor's initiatives, Virginia Performs, specifically focusing on the Agency's performance and challenges. She provided a detailed summary of the agency's statistical review noting the need for improvement in case resolution time. Additionally, Ms. Ryals reported that a review team has been assigned the task of developing a workplan to improve case resolution time. The team members include Ms. Jolly, Dr. Carter and Ms. Wingfield.

Ms. Ryals apprised the Board of the agency's six month pilot project, "Dial 211". The initiative provides license lookup to all Virginians needing assistance in locating health care professionals. Ms. Ryals stated that major newspapers will be advertising "Dial 211" in December.

Ms. Ryals provided an update on the Agency's move noting that the move is scheduled for mid August.

PRESENTATION ON ENFORCEMENT ACTIVITIES:

Ms. Faye Lemon, Director of Enforcement, presented a slide presentation overview of the role of Enforcement. She apprised the Board of the agency's case load as well Optometry's specific case statistics and resolution time. To reduce days at the investigative level, Ms. Lemon stated that the expertise of the board members may be sought at the beginning of the investigation rather than at the end. Additionally, Ms. Lemon requested that the Board members submit ideas on improving case resolution time.

APPROVAL OF MINUTES:

On properly seconded motion by Dr. Schlabach, the Board voted unanimously to approve the minutes of the December 13, 2006 meeting.

DISCUSSION ITEMS:

Adoption of Notice of Intended Regulatory Action – CE
Ms. Yeatts presented the attached revisions to the original Notice of Intended Regulatory Action regarding continuing education. Public comment on the proposed requirement for a certain number of hours of face-to-face interaction and concerns expressed over how to ensure appropriate course monitoring prompted the revisions. On properly seconded motion by Ms. Thomas, the Board voted unanimously to approve the amended notice.

Fast Track of Public Participation Guidelines Amendments

Ms. Yeatts presented an overview of the Public Participation Guidelines for adoption.

On properly seconded motion by Dr. Boone, the Board voted unanimously to adopt the Public Participation Guidelines fast track as presented.

Fast Track of Regulatory Amendment – Licensure Verification
Ms. Yeatts presented proposed amendments clarifying the Board's current policy in the matter of the licensure regulations by examination.

On properly seconded motion by Dr. Schlabach, the Board voted unanimously to approve the proposed amendments for fast tracking.

Legislative Review
Ms. Yeatts presented an overview of the 2007 legislation that may impact the Agency.

Federal and Virginia's Contact Lens Laws and Regulations/FCLCA
Dr. Hettler apprised the Board that the Virginia Regulations were less restrictive than the Federal Laws. He suggested that the Board may wish to consider adding language to the regulations noting that Federal Law supersedes the Virginia regulations. The Board took no action.

CELMO and OE Tracker
Dr. Schlabach reported that CELMO had developed an informational packet titled "Doctor Move More Frequently" for dissemination. He requested that the packets be forwarded to the Board members for their review. Dr. Schlabach noted that monies to operate CELMO and OE Tracker were not directly funded by Alcon, Essilor and Vistakon. Further, that these entities do sponsor the ARBO organization as a whole; therefore, there may be conflict of interest concerns. This issue will be reviewed by Board Counsel.

CPT Codes
On properly seconded motion by Dr. Jellenek, the Board voted unanimously to add CPT codes 36416 and 82785.

The request of Bruce Keeney regarding the AOA's New Level II CPT Codes was placed on the Board's May agenda for review.

Prescribing Antibiotics
The Board considered the request regarding the prescribing of antibiotics for a sinus infection. It was the consensus of the Board that any prescription must be ocular related and that the treatment record must include the ocular involvement for the prescription to be valid. Dr. Carter was requested to draft the Board's response.

COMMITTEE REPORTS:

Continuing Education Committee
Dr. Jellenek presented an overview of the Committee's January 30, 2007 meeting. Ms. Yeatt's earlier presentation on the Amended Notice of Intended Regulatory Action detailed the Committee's recommendations.

PRESIDENT'S REPORT:

Dr. Hettler apprised the Board of ARBO's June 24-26, 2007 meeting and requested that Dr. Schlabach and Dr. Carter attend the meeting. It was the consensus of the Board that Dr. Schlabach and Dr. Carter attend the meeting.

Dr. Hettler reported that the website's latest optometry newsletter was downloaded for review at a rate of 53 percent.

EXECUTIVE DIRECTOR'S REPORT:

Dr. Carter informed the Board that the disciplinary case trend reflected an overall increase in performance. She noted that there had been an increase from six to twelve compliance cases from last year to this year.

Dr. Carter reported that there may be a need for an additional fee reduction. However, it is too early to definitely determine the results of the second year of renewal reductions scheduled to end in October of 2008.

NEW BUSINESS:

No new business was presented.

ADJOURNMENT:

The Board concluded its meeting at 12:20 p.m.

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David H. Hettler, O.D.
President

_____
Elizabeth A. Carter, Ph.D.
Executive Director

Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	Board of Optometry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC105-20-10 et seq.
Regulation title	Regulations Governing the Practice of Optometry
Action title	Continuing education requirements
Document preparation date	3/15/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

In its proposed regulatory action, the Board intends to clarify and amend certain provisions of section 70, the continuing education requirements as stated in Chapter 20. A Notice of Intended Regulatory Action was published on July 24, 2006. During the comment period on the NOIRA and at subsequent meetings, the Board became of other issues relating to continuing education that were not included. Therefore, the 2006 NOIRA is being withdrawn, and the amendments identified in that document incorporated into another Notice.

The Board intends to address issues relating to the validity and value of continuing education for the practitioner. To do so, it will consider requiring that some of the hours be obtained in face-to-face courses, that half of the hours be offered by sponsors approved by two educational accrediting bodies, that additional documentation and verification be provided and maintained and that the hours relating to therapeutic pharmaceutical agents be increased for optometrists.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards
The general powers and duties of health regulatory boards shall be:
…
6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. …

There is a statutory mandate for the Board of Optometry to require continuing education for renewal of licensure provided in:

§ 54.1-3219. Continuing education.

As a prerequisite to renewal of a license or reinstatement of a license, each optometrist shall be required to take annual courses relating to optometry as approved by the Board. The courses may include, but need not be limited to, the utilization and application of new techniques, scientific and clinical advances and new achievements of research. The Board shall prescribe criteria for approval of courses of study and credit hour requirements. However, the required number of credit hours shall not exceed sixteen in any one calendar year. The Board may approve alternative courses upon timely application of any licensee. Fulfillment of education requirements shall be certified to the Board upon a form provided by the Board and shall be submitted by each licensed optometrist at the time he applies to the Board for the renewal of his license. The Board may waive individual requirements in cases of certified illness or undue hardship.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

In section 70 of 18VAC105-20-10 et seq., the following changes were identified in the NOIRA document that was published with a comment period from July 24, 2006 to August 23, 2006:

1. The Board believes it is important to affirmatively state in regulation that falsifying the attestation or failure to comply with CE requirements may subject a licensee to disciplinary action by the Board, consistent with § 54.1-3215 of the Code of Virginia.

2. Currently, the regulation provides that courses that are "solely" designed to promote the sale of specific instruments or products and courses offering instruction on augmenting income are excluded. The problem is that "solely" is too subjective and allows for acceptance of a course that is 99% a sales pitch and 1% relating to patient care. The Board intends to amend that provision to make it clearer that the principal purpose of an acceptable course cannot be to sell goods or augment income.

3. Subsection B needs to be amended to specifically state that any request for an extension or a waiver of CE requirements must be made prior to date the renewal form is due, which is December 31st .

4. Subsection G needs to be amended to distinguish between those entities that are providers or sponsors of continuing education and those that offer approval for courses (Council on Optometric Practitioner Education (COPE) and the Accreditation Council for Continuing Medical Education of the American Medical Association).

5. The current regulation, as stated in subsection G, allows an approved course or program to be offered by correspondence, electronically or in person. In amending this section, the Board will consider some requirement on the number of hours that must be obtained from courses that are face-to-face – possibly 4 hours of the required 16 hours. Such a limitation is typical of CE requirements in other states. Face-to-face courses or interactive programs have the benefit of an exchange of ideas and experiences with other practitioners that reading a journal article does not offer. Since many optometrists practice in solo or small practices, the Board believes there may be a benefit to interaction at professional meetings and a positive impact on health and safety of patient in their care.

The following issues were identified in meetings of the Regulatory Committee since the publication of the original NOIRA and will be considered by the Board in the development and promulgation of amendments to CE regulations:

1. While all providers of continuing education currently approved by the Board would continue to be acceptable, the Board may limit the number of hours that may be obtained by providers that are not approved by the two accrediting bodies – the Council on Optometric Practitioner Education (COPE) and the Accreditation Council for Continuing Medical Education of the American Medical Association. Those entities provide an assurance of quality for the content offerings and maintain records of attendance for verification in an audit. The Board will consider specifying that half of the 16 hours must be either COPE or AMA approved.

2. By observation and experience with audits of continuing education, the Board is concerned that some sponsors do not provide a certificate of completion that gives sufficient information about the course nor do they provide verification of attendance. In amended regulations, the Board will consider specifying that an approved CE sponsor must provide a certificate of attendance that shows the date, location, lecturer, and content hours of the course; contact information of the provider/sponsor. The certificate of attendance must be based on verification by the sponsor of the attendee's presence throughout the course – either provided by a post-test or by an independent monitor. If a licensee obtains CE from an electronic or self-study course, a post-test would be required as verification of completion.

3. In conducting an audit of a licensee continuing education, it is often necessary to contact a sponsor or provider to request additional information about a course or about the licensee's attendance. Therefore, the Board will consider an additional requirement for an approved CE provider/sponsor to maintain documentation about the course and attendance for at least three years following its completion.

4. The Board is concerned that private sponsors/providers of continuing education occasionally provide a benefit based on membership or referrals to a practice or business. The Board will consider language that requires approved continuing education to be generally available to all licensed optometrists.

5. Given the expansion of therapeutic pharmaceutical agents in the practice of optometry, the Board will also consider increasing the required hours from 2 to 4 hours in the treatment of the human eye and its adnexa with pharmaceutical agents; those hours would continue to be included in the required16 hours of continuing education.

6. Since the AMA can provide verification of clinical supervision hours, approved for AMA Type II CME, the Board will consider inclusion of those hours as acceptable CE for optometrists.

7. The Board will also consider the acceptance of or a requirement for third-party verification of continuing education courses and hours.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The review of continuing education requirements in section 70 of the regulations was initiated to consider utilization of OE Tracker, a system recently established the Association of Regulatory Boards of Optometry (ARBO) for the purpose of tracking and maintaining information about CE compliance with requirements for state licensure. The tracking system posts hours of approved CE and allows optometrists to view the status of their continuing education. A committee of the Board was appointed to consider OE Tracker and other issues relating to continuing education.

The Committee reviewing the continuing education regulations did not recommend an amendment to require all licensees to participate. As the market evolves for OETracker's service, it may become possible to use OETracker, as optometrists have voluntarily agreed to record their continuing education credits through the system. Currently, many national continuing education vendors already require a tracker number to record participation, so a large portion of optometric continuing education is already being recorded by OETracker. Five states have mandated their licensees to participate. For them, ARBO provides tailored reports to the board office on all licensees or only those that do not have sufficient hours.

In addition to philosophical objections over the state compelling licensees to participate in OETracker, the Committee has concerns over its funding. Historically, ARBO has funded its activities through member board fees, national examination fees, and fees to vendors for reviewing continuing education for approval through its Council on Professional Education (COPE) service. However, OETracker has also been funded "sponsorships" by two commercial companies, Essilor and Alcon. This funding relationship has not been publicized heretofore and may represent some conflict for the regulatory use of OETracker. More information will have to be gathered, and the Virginia Board will need to explore conflict of interest concerns before there is further consideration of the ARBO OETRacker system.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.